IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4328 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE BARODA RAYON CORPORATION LTD & 4 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AD SHAH for Applicant(s) : 1 - 5.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
DS AFF.NOT FILED (R) for Respondent(s) : 2,
MR RS SANJANWALA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/10/2007

ORAL JUDGMENT

1. Present application has been filed by the applicants under section 482 of the Criminal Procedure Code to quash and set aside the

process issued by the learned Chief Judicial Magistrate, Surat in Criminal Case No.35298 of 2006.

2. Respondent No.2 herein – original complainant has filed complaint being Criminal Case No. 35298 of 2006 in the Court of learned Chief Judicial Magistrate, Surat against the applicants herein – original accused Nos. 2 to 6 and others for the offence under sections 138, 139 and 141 of the Negotiable Instrument Act; 1881 (hereinafter referred to as "The NI Act" for short) alleging inter alia that the cheque No.774132 for an amount of Rs.48,871/- dated 31.8.2006 drawn on IDBI Bank was issued by the applicant No.1 – company given to the complainant towards the interest on the amount of gratuity due and payable and when the said cheque was deposited in the bank, the same has been returned by the bank on 1.9.2006 with an endorsement "**payment stopped by drawer**" and thereafter the applicants and others were served with statutory notices as required under section

138 of the NI Act on 11.9.2006 and within stipulated time as contemplated under section 138 of the NI Act the payment has not been made towards the cheque in question, it is alleged that the applicants and others have committed offence under sections 138, 139 and 141 of the NI Act and therefore, the impugned complaint has been filed on 5.10.2006. That the learned Magistrate issued the summons upon the applicants and others for the offence under section 138 of the NI Act and therefore, the applicants – original accused Nos. 2 to 6 have preferred present application under section 482 of the Criminal Procedure Code to quash and set aside the order passed by the learned Magistrate issuing process / summons against the applicants in the aforesaid criminal case No.35298 of 2006.

3. Shri A.D.Shah, learned Senior Advocate appearing on behalf of the applicants has submitted that there were two post dated cheques given to the complainant on 31.3.2006 towards the amount of gratuity as well as interest on the amount of

gratuity payable to the complainant by the company, one dated 30.6.2006 for a sum of Rs.1,69,077/- and another dated 31.8.2006 for the sum of Rs.48,871/- and the cheque bearing No. 774094 dated 30.6.2006 for an amount of Rs.1,69,077/- was returned / dishonoured with an endorsement "**payment stopped by drawer**" and a statutory notice as contemplated under section 138 (b) of the NI Act was issued to the accused persons with regard to the said cheque on 27.7.2006 and the said notice was received by the accused persons on 1.8.2006 and in reply to the notice dated 27.7.2006, the applicant No.1 – company informed the complainant to take two fresh new cheques towards in lieu of the aforesaid two cheques dated 30.6.2006 (for a sum of Rs.1,69,077/-) and another cheque dated 31.8.2006 (for a sum of Rs.48,871/- for which the impugned complaint has been filed) and a cheque No.924770 dated 30.6.2006 for an amount of Rs.48,871/- was got ready in exchange of impugned cheque No.774132 dated 31.8.2006 and the intimation dated 17.8.2006 was served upon

the complainant as well as his advocate in person still the complainant did not contact the office for taking the new cheques and even attempts were also made by the company to deliver the aforesaid two fresh cheques and inspite of that the complainant deposited the cheque in question No.774132 dated 31.8.2006 for a sum of Rs.48,871/- which came to be dishonoured / returned with an endorsement **"payment stopped by drawer."** It is submitted that when the company had offered and intimated the complainant to take two fresh cheques in lieu of the cheques in question, the complainant did not take fresh cheques and instead deposited the cheque in question and therefore, it is submitted that the applicants have not committed any offence as alleged under section 138 of the NI Act as company had already offered to make the payment as required under section 138 (c) of the NI Act. It is also further submitted by Shri A.D.Shah, learned Senior Advocate appearing for the applicants that even after the return of the cheque in question and after receipt of the

statutory notice under section 138(b) of the NI Act on 11.9.2006 vide reply dated 28.9.2006 the company again reiterated to their offer of exchanging the cheque in question and to accept the fresh cheque in lieu of the cheque in question dated 31.8.2006 and the said notice was received by the complainant on 30.9.2006, however, the complainant did not accept the fresh cheque dated 30.6.2006 in lieu of the earlier cheque in question dated 31.8.2006 and therefore, when the company has offered fresh cheques in reply to the notice itself as contemplated under section 138 (c) of the NI Act before initiation of criminal proceedings, it cannot be said that the applicants have committed any offence as alleged under section 138 of the NI Act. Thus, the sum and substance of submission made on behalf of the applicants in support of their prayer to quash and set aside the impugned complaint / criminal case is that they were and are ready and willing to pay the cheque amount to the complainant and their offer in response to the notice amounts to

payment for the purpose of proviso (c) of section 138 of the NI Act.

4. Shri A.D.Shah, learned Senior Advocate appearing for the applicants has relied upon the decision of the Hon'ble Supreme Court in case of ***D. Vinod Shivappa V/s. Nanda Belliappa*** reported in **AIR 2006 SC 2179 (para – 13)** and has submitted that as observed by the Hon'ble Supreme Court, failure to make payment will constitute offence and proviso (c) of section 138 of the NI Act clearly protects honest drawer whose cheques may have been dishonoured for the default of others. It is submitted that as the original complainant did not vacate the company's premises, an instruction was given earlier with regard to stop payment of the aforesaid two cheques dated 30.6.2006 and 31.8.2006, however, they realized their mistake and vide communication dated 17.8.2006, which was prior to due date of 31.8.2006, fresh new cheques were offered and it was requested to return the old cheques, which was not due for presentation on 17.8.2006.

Therefore, it is submitted that thus, prima facie, requirement of section 138 of the NI Act have not been made out, more particularly, the bank's statement clearly indicates that there was sufficient balance on the date of issuance of the cheques.

5. Application is vehemently opposed by Shri R.S.Sanjanwala, learned advocate appearing for the respondent No.2 – original complainant. An affidavit in reply and further affidavit are filed by the respondent No.2 herein – original complainant. It is submitted in the reply that the applicants have suppressed vital and material facts and made statement which are either incorrect or inaccurate and tried to mislead this Court. It is submitted in the reply that the complainant was working with the applicant No.1 company from 1979 onwards but was forced to resign on 6.11.2001 and had to recover an amount of Rs.6,63,400/- from the applicants and filed Special Civil Suit No.329 of 2005 in the Court of learned 9th Addl. Senior Civil Judge

(SD), Surat. It is also further submitted that the said suit was on account of unpaid salary, leave travel allowances, provident fund, conveyance allowance, medical allowance, bonus and gratuity. It is also further submitted in the reply that he also initiated proceedings under the Payment of Gratuity Act for unpaid gratuity amount and after giving opportunity to the applicant No.1 – company, an order came to be issued by the Controlling Authority under the Payment of Gratuity Act; 1972 directing the applicant No.1 – company to pay an amount of Rs.1,69,077/- as and by way of gratuity along with interest at the rate of 10% p.a. from the due dates of the above amount and the said order came to be passed in May – 2005. It is further submitted that as payment as directed was not paid, a certificate was issued on 18.8.2005 permitting recovery of the above amounts as arrears of land revenue and pursuant to the said certificate, properties of the applicant No.1 – company were placed under attachment. It is further submitted that attachment of the

properties was seriously prejudicial to the applicant company, he had lured into a settlement at the instance of all the applicants and on 31.3.2006, he agreed to receive the above amounts in two installments payable on 30.6.2006 and 31.8.2006 and accordingly, the applicants issued two post dated cheques, first being cheque dated 30.6.2006 bearing No.774094 for an amount of Rs.1,69,077/- being the principal amount and second cheque dated 31.8.2006 bearing No.774132 for the sum of Rs.48,871/- being the interest amount. That on the basis of above settlement, on 7.4.2006 an application was made by him before the Chief Executive Magistrate / City Mamlatdar, Surat praying that the entry made in the revenue records of the attachment of the company's properties for the amounts payable to him be deleted. It is submitted that the above facts are even suppressed by the applicants. It is further submitted that on the due date when the first cheque dated 30.6.2006 was deposited, the same was returned as dishonoured and notice was issued on 27.7.2006

under the provisions of NI Act calling upon the applicants to pay the amount due and there was no response to the said notice on merits but by letter dated 17.8.2006 addressed to his advocate, the applicants proposed to issue fresh cheques for old cheques in lieu of the settlement entered into on 31.3.2006. It is submitted that other cheque dated 31.8.2006 was also deposited in his bank after its due date but was returned as dishonoured and another notice dated 11.9.2006 was issued to the applicants in accordance with section 138 of the NI Act and for both the cheques, criminal complaints are filed and the present application pertains to criminal case No. 35298 of 2006 in respect of cheque dated 31.8.2006 for the sum of Rs.48,871/-. It is, therefore, submitted that in fact, the complainant has been duped and as there was an attachment by the authority, the applicants initially agreed to make payment and issued the aforesaid two post dated cheques and induced the complainant to submit an application to the concerned Mamlatdar

for deleting the entry of attachment and thereafter the aforesaid two cheques are bounced / dishonoured. Meeting with the averments in para – 2 of the affidavit in rejoinder to the affidavit in reply to the effect that the company has tried prior to 17.8.2006 even by sending persons from the office of the company to the residence of the complainant for getting the cheques in exchange of dishonoured cheques, the complainant has filed affidavit-in-sur-rejoinder and it is denied that the persons from the office of the company was sent to the residence of the complainant for getting the cheques in exchange of the dishonoured cheques. It is also specifically denied that his advocate spoke to Mr. Nanavaty on 14.8.2006 and 17.8.2006 for getting fresh cheques or that the complainant did not take two fresh cheques. It is also specifically denied that the payment was offered soon after the receipt of the notice dated 27.7.2006 on 1.8.2006. It is also specifically denied that the company has send persons to collect new cheques by handing over

dishonoured cheques.

6. Shri Sanjanwala, learned advocate appearing for the respondent No.2 – original complainant meeting with the contentions on behalf of the applicants that they were and are ready and willing to pay the cheque amount to the complainant, has submitted that the payment of cheque amount has to be made within a period of 15 days from the date of receipt of notice demanding payment and any payment thereafter will not absolve the accused from the liability of criminal offence. It is submitted that in the present case, the so called offer vide letter dated 28.9.2006 (served upon the complainant on 30.9.2006) was clearly beyond the period of 15 days of the statutory notice under section 138(b) of the NI Act and therefore, the same cannot be considered to be the offer as contemplated under section 138(c) of the NI Act. He has relied upon the decision of the Hon'ble Supreme Court in case of ***Rajneesh Agrawal V/s. Amit J. Bhalla*** reported in **2001 CR.L.J. 708** in

support of his submission that the criminal complaint cannot be quashed on account of deposit of money in the Court.

7. Meeting with the second contention of the applicants with respect to their offer in response to the notice amounts to payment for the purpose of proviso (c) of section 138 of the NI Act and therefore, the complaint is required to be quashed is concerned, Shri Sanjanwala, learned advocate appearing for the original complainant has submitted that, first of all, so far as the second dishonoured cheque (which is the subject matter of the criminal complaint and for which quashing is sought) notice was issued on 11.9.2006 and was received by the applicants on 14.9.2006 and the notice having been received on 14.9.2006, the applicants were required to pay the amount in question within a period of 15 days i.e. on or before 29.9.2006, however, the reply to the said notice was served upon the complainant by hand delivery on 30.9.2006. It is further submitted that the said reply is dated

28.9.2006, but there is no evidence on record to suggest that the same was issued on 28.9.2006 by the recognized mode of service. Therefore, it is submitted that for all purposes, date of the said notice will have to be taken as 30.9.2006 and as such, it is beyond the period of 15 days and therefore, it is submitted that the offer made in response to the notice in respect of the second cheque is beyond the period of 15 days.

8. It is further submitted that even assuming for the sake of arguments that the offers made by the applicants in the letter dated 28.9.2006 were made within the prescribed time limit, the said offers are for issuing cheques in lieu of the dishonoured instrument and is not a valid offer. It is submitted that proviso (c) to section 138 of the NI Act provides that drawer of the cheque must make the payment of the amount covered by the cheque to the payee or as the case may be to the holder in due course of the cheque within 15 days of the receipt of the said notice. It is submitted that an offer to

pay the amount covered by the cheque is not sufficient for the purpose of proviso (c) to section 138 of the NI Act, as proviso (c) contemplates actual payment and such offer cannot be construed as due compliance with the requirement of proviso (c) to section 138 of the NI Act. It is submitted that a conditional offer to pay, as in the facts of the present case, would certainly not to be construed as due compliance with requirement of proviso (c) to section 138 of the NI Act. It is submitted that the law contemplates an unconditional payment of the amount covered by the cheque and anything short of unconditional payment cannot be construed as due compliance with the requirement of law.

It is also further submitted that the payee of the cheque or holder in due course, as the case may be, is entitled not to accept any such conditional offer. Once a cheque is dishonoured and notice is issued under section 138 of the NI Act on non-payment of the amount due, the cause

of action for filing the complaint arises. It is submitted that assuming that any such conditional offer is accepted and the dishonoured instruments are returned in lieu of the new cheques and the new cheques are then deposited, if are not honoured for any reason or are returned as dishonoured, the payee of the earlier dishonoured instruments though entitled to file a criminal complaint, would not be in a position to do so in absence of the original dishonoured instrument, the original instrument having been returned to the drawer of the cheques. As a consequences, if at all, the payee is entitled to issue fresh notice for the dishonoured of the new cheques, he may have to once again go through the ordeal of issuing notice, etc. It is further submitted that assuming that on dishonour of new cheques, the payee would be entitled to file a criminal complaint for the dishonour of the cheques issued earlier, a serious issue of limitation would arise, depending on when the new cheques were deposited, as the cheques can be deposited

within a period of six months from its due date as provided by proviso (a) to section 138 of the NI ACT. Shri Sanjanwala, learned advocate has relied upon the decision of the Kerala High Court in case of ***Vargnese V/s. C.K.Ramani*** reported in **1998 CR.L.J.2755** and the decision of the Bombay High Court in case of ***Ex. Major Uday Sathe V/s. Rahul Rajendra Borundia*** reported in **2006 Cr.L.J. 3435.**

9. Shri Sanjanwala, learned advocate appearing for the original complainant has therefore submitted that as the clear case of offence under section 138 of the NI Act is made out against the applicants and others and all the ingredients of making out a case under section 138 of the NI Act are satisfied, it is requested not to exercise the powers under section 482 of the Criminal Procedure Code and not to quash the impugned complaint. It is also further submitted that there are disputed questions of facts and the submissions and contentions made on behalf of the applicants are all required to be

considered and adjudicated at the stage of trial on leading proper evidence and therefore, it is requested to dismiss the present application.

10. Shri K.T.Dave, learned APP appearing on behalf of the State while adopting the submissions made on behalf of the respondent No.2 – original complainant has submitted that as such, the so called offer made by the accused persons to offer fresh cheque cannot be said to be complying with sub-section (c) of section 138. It is submitted by him that as such, actual payment is required to be made within 15 days from the date of receipt of notice and offering to issue fresh cheque cannot be said to be actual payment as contemplated under sub-section (c) of section 138 and therefore as all the ingredients of section 138 of the NI Act are satisfied, it is requested not to exercise the powers under section 482 of the Criminal Procedure Code.

11. Heard the learned advocates appearing on behalf

of the respective parties.

12. At the outset, it is to be noted that so far as the complaint in question is concerned it is with regard to cheque bearing No. 774132 dated 31.8.2006 of Rs.48,871/-. It is the contention on behalf of the applicants – original accused that by notice dated 27.7.2006, the applicant No.1 – company vide communication dated 17.8.2006 offered the complainant to collect fresh cheque in lieu of impugned cheque in question and inspite of that the complainant did not accept the fresh cheque and deposited the impugned cheque dated 31.8.2006 and as there was an offer made by the applicant – company it cannot be said that the applicants have committed any offence as alleged under section 138 of the NI Act. It is also the case on behalf of the applicants that even subsequently vide communication dated 28.9.2006 received by the complainant on 30.9.2006 and in response to the notice under sub-section (b) of section 138 also, the company offered the payment by fresh

cheque which has not been accepted by the complainant and therefore also, the applicants have not committed any offence as alleged under section 138 of the NI Act. Now, so far as the offer dated 17.8.2006 is concerned, it is required to be noted that the said offer is much prior to the impugned cheque dated 31.8.2006. It is the contention on behalf of the applicants that earlier the Baroda Office has by mistake given instruction to the bank for stop payment and having realized mistake, the applicant – company offered to issue fresh cheque and the complainant was called upon to exchange the cheque in question. If the submission of the applicants is to be accepted in that case also, it is not appreciable why the company could not further instruct the bank to make the payment for which the instruction was given for stop payment as date of the cheque was 31.8.2006. Even otherwise, such an offer cannot be considered to be a valid offer as contemplated under section 138 (c) of the NI Act. For the purpose of considering the valid offer under

section 138(c) of the NI Act what is required to be considered is offer to make the payment within 15 days from the date of receipt of the notice under sub-section (b) of section 138.

13. So far as alleged offer made by the applicant – company vide communication dated 28.9.2006 served in person upon the complainant on 30.9.2006 is concerned, first of all, it is required to be noted that to consider the valid offer under section 138(c) of the NI Act, actual payment must have been made within 15 days from the date of receipt of statutory notice as contemplated under subsection (b) of section 138. In the present case, the statutory notices intimating the applicants with regard to return of the cheque in question dated 11.9.2006 was served upon the applicants admittedly on 14.9.2006. Thus, the payment as contemplated under sub-section (c) of section 138 of the NI Act is to be made within a period of 15 days i.e. on or before 29.9.2006. In the present case, even the offer to make the payment is

beyond 15 days i.e. the same has been served in person upon the complainant on 30.9.2006 i.e. beyond the period of 15 days. It is true that the said communication is dated 28.9.2006, however, admittedly, it has been received in person by the complainant only on 30.9.2006 i.e. beyond the period of 15 days and nothing is on record whether earlier the company has tried to serve the said communication upon the complainant. Under the circumstances, the said aspect is required to be considered on leading proper evidence and on that ground the complaint is not required to be quashed and set aside in exercise of the powers under section 482 of the Criminal Procedure Code as the same would be highly debatable question which is required to be considered on leading proper evidence and on appreciation of evidence.

14. At this stage, the decision of the Hon'ble Supreme Court in case of ***Rajneesh Aggarwal V/s. Amit J. Bhalla*** reported in **2001 CR.L.J. 708** is also required to be referred to. In the said

decision the Hon'ble Supreme Court has held that once the offence of dishonour of cheque is committed, any payment made subsequent thereto will not absolve the accused drawer of the liability of the criminal offence though in the matter of awarding of sentence, it may have some effect on the Court trying the offence.

15. Even otherwise, it is required to be noted that vide communication dated 28.9.2006 (served upon the respondent No.2 – complainant on 30.9.2006) all the applicants have offered calling upon the complainant to get fresh new cheque and return of old cheque by contacting the personnel department of the company and to go to the personnel department of the company. Thus, it appears that the said offer made vide communication dated 28.9.2006 is a conditional offer and it cannot be said to be an offer as contemplated under sub-section (c) of section 138 so as to absolve the applicants of any criminal liability under section 138 of the NI Act. Section 138 of the NI Act reads as under :-

"Section 138 Dishonour of cheque for insufficiency, etc., of funds in the account -

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punishable with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless -

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for

the payment of he said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

16. Now, on bare reading of sub-section (c) of section 138 of the NI Act, ***a drawer of the cheque has <u>to make the payment of the said amount of money</u>*** to the payee or as the case may be to the holder in due course within 15 days of the receipt of the notice as contemplated under sub-section (b) of section 138 of the NI Act. Therefore, what is required is making the payment of the said amount of money and not offering to issue fresh cheque. The Legislature would not have even intended to make the payment by cheque as once the cheque is already dishonoured and therefore, when the payment is made either by cheque or D.D. and/or pay slip

then and then it can be said to be making payment of the said amount of money as contemplated under sub-section (c) of section 138. Even otherwise, the payee of the cheque or the holder in due course is justified in refusing to accept the cheque towards the payment and is justified in expecting the payment by cash or demand draft. Once a cheque is dishonoured and a notice is issued under section 138 of the NI Act on non-payment of the amount due the cause of action for filing a complaint arises and after receipt of the statutory notice as contemplated under sub-section (c) of section 138, if such a conditional offer is made to make the payment by cheque and assuming that any such conditional offer is accepted and the dishonoured instruments are returned in lieu of new cheque and new cheque when deposited are not honoured for any reason or are returned as dishonoured, the payee of the earlier dishonoured instrument though entitled to file a criminal complaint, would not be in a position to do so in absence

of the original dishonoured instrument, the original instrument having been returned to the drawer of the cheque and the payee is required to initiate fresh proceedings of issuing fresh notices, etc. for the dishonour of a new cheque and he will have to once again go through the ordeal of issuing notice, etc. This cannot be the intention of the Legislature. Under the circumstances, while considering the payment as contemplated under sub-section (c) of section 138, it is to be construed that only in a case where the payment is made either by cash or demand draft or pay slip within 15 days from the date of receipt of the notice, a drawer is absolved from criminal liability under section 138 of the NI Act. Thus, the law contemplates an unconditional payment of amount covered by the cheque and it is held that if offer to make the payment within 15 days of receipt of the notice is again by cheque, it cannot be construed to be making the payment as contemplated under sub-section (c) of section 138 of the NI Act and therefore, in that case, the drawer is not

absolved from criminal liability under section 138 of the NI Act on offering to make the payment by cheque within 15 days of receipt of the notice as contemplated under sub-section(b) of section 138.

17. Under the circumstances and considering the facts of the case on hand, first of all, the offer / communication dated 28.9.2006 served upon the complainant in person on 30.9.2006 is beyond the period of 15 days from the date of receipt of the notice under sub-section (b) of section 138 and assuming for the sake of submission that the same is within 15 days in that case also, considering the communication / offer dated 28.9.2006 it is a conditional offer calling upon the complainant to go to the personal department of the company to exchange the old cheque and to get fresh cheque and therefore, the same cannot be said to be making payment as contemplated under sub-section (c) of section 138 and even otherwise, as stated above, what is required to be considered is the actual

payment. Under the circumstances, the request on behalf of the applicants to quash and set aside the impugned complaint on the ground that there was an offer to make the payment as contemplated under sub-section (c) of section 138 cannot be accepted. Even otherwise, as stated above, there are highly disputed questions of facts involved which require to be considered only at the time of trial on leading proper evidence and on appreciating the same and therefore, the impugned complaint is not required to be quashed and set aside in exercise of the power under section 482 of the Criminal Procedure Code. It is also required to be noted at this stage that there were two cheques issued by the company towards the amount of gratuity due and payable and the amount of interest on the gratuity and it is also required to be noted that there was an attachment and the necessary entry was made in the record and the company wanted to get out of the same and therefore, the aforesaid cheques came to be issued and on receipt of the said cheques, the complainant submitted an

application for deleting the entry of attachment in the record and thereafter, the cheques in question are dishonoured with an endorsement "**payment stopped by drawer**". This conduct also requires to be considered while considering the application under section 482 of the Criminal Procedure Code. Under the circumstances, no case is made out to quash and set aside the impugned complaint in exercise of the powers under section 138 of the NI Act.

18. For the reasons stated above, application deserves dismissal and is accordingly dismissed. Rule discharged. Ad-interim relief, granted earlier, stands vacated forthwith.

[M.R.Shah, J.]

FURTHER ORDER

At this stage, Mr. A.D.Shah, learned advocate has requested to continue ad-interim relief for further period of 6 (six) weeks. In

the facts and circumstances of the case, ad-interim relief granted earlier is directed to continue till 4th December, 2007.

[M.R.Shah, J.]

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